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October 19 , 1979

Mr. Sonny Najera
Assistant Director
Aeronautics Division
Department of Transportation
205 South 17th Avenue
Phoenix, AZ 85007

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ARIZONA ATTORNEY GENERAL

Re: I79-263 (R79-240)

Dear Mr. Najera:

This is in reply to your recent request concerning the possible conflict of interest of Arizona Department of Transportation ("Department") employees who are engaged in the operation and management of the Grand Canyon National Park Airport ("Airport"). The Department's Aeronautics Division bears responsibility for operating and maintaining the Airport under A.R.S. §§ 1616 28-104.B.3, 28-108.A, subsections 15 and 17, and 28-1707. As we understand the facts, six Department employees are currently stationed at the Airport: the Airport Manager, a secretary, three maintenance persons and a custodian. The family members of each employee are or have been employed by businesses which are under contract or who rent space in the Airport to provide services for travelers using the Airport facilities. You have asked whether such employment creates a conflict of interest for the Department's employees.

The isolation of the Airport is a major factor in the problem you raise. The only privately-owned land within 50 miles of the Airport lies immediately adjacent to it. Located within the adjacent cluster of privately-owned parcels is the Village of Tusayan. With the exception of two employers, all of the businesses in Tusayan are owned by persons who have contracts with the Department for the operation of concessions at the Airport. The population of the Tusayan area is limited by a shortage of housing and water, which is so acute that the Department has provided housing or trailer spaces and domestic water for its six employees. As a result of this geographical isolation and limited population, employment opportunities for family members of the Department's employees are effectively limited to Tusayan businesses, including businesses under contract with the Department.

Arizona's conflict of interest statute, A.R.S. § 38-503.A, provides that "[a]ny public officer or employee of a public agency, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency" must disclose that interest in the official records of the agency and "refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase." Likewise, "[a]ny public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency" shall disclose that interest and refrain from voting on such conflicting matters. A.R.S. § 38-503.B.

The Legislature has defined a "substantial interest" to include "any pecuniary or proprietary interest, either direct or indirect other than a remote interest." A.R.S. § 38-502.11. "Relative" has been broadly defined to include "the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502.9. It is our opinion that a relative's employment by a business which is an interested party in a decision made by a Department employee does constitute a "substantial interest", because the contract or decision involved may confer a direct economic benefit or detriment upon the employee or his relative.

However, that conclusion is only the first step in the necessary analysis of the problem you have posed. The conflict of interest statute contemplated that public officers and employees would encounter conflicts of interest in the performance of their public duties and provided specific procedures for handling those conflicts. The heart of A.R.S. § 38-503.A and B is full disclosure of any conflict. The Legislature foresaw, however, that in certain situations the provisions of A.R.S. § 38-503.A and B might prevent a public officer or employee from fulfilling his statutory responsibilities, and established a procedure to deal with those situations. A.R.S. § 38-508.A provides:

A. If the provisions of § 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.

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Thus, when a Department employee is presented with a decision involving a relative's employer, that employee should disclose the conflict in the official records of the Department and refrain from participating in the decision. If a conflict of interest prevents the Department employee from making the decision at hand, he should notify his "superior authority", who can then act in the employee's capacity with respect to that decision or authorize someone else to do so.

In no event would the Department be paralyzed from acting by a conflict of interest on the part of one or more employees. A.R.S. § 38-508.B provides:

B. If the provisions of § 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

Even if every employee of the Department had a conflict of interest, the Department could act if it complied with A.R.S. § 38-508.B. Thus, the Arizona conflict of interest statute provides practical procedures for dealing with the situation faced by the Department's employees in Tusayan. We stress, however, that there are substantial penalties for failure to comply with the statutory procedures. See A.R.S. § 38-510.

Finally, we note that this opinion deals only with conflicts arising from the employment of relatives of the Department's employees. If the Department employees themselves were employed as a second job with parties having an interest in their decisions, the same statutory provisions would apply and would require full disclosure of the nature of the conflict. We do not imply that such dual employment is appropriate or would be permitted by the agency in question.

Sincerely,



BOB CORBIN
Attorney General